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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,282	12/01/2003	Kenneth Carson		5273

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EXAMINER

BASICHAS, ALFRED

ART UNIT PAPER NUMBER

3749

DATE MAILED: 12/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/726,282

Applicant(s)

CARSON ET AL.

Examiner

Alfred Basichas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 5, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson (6,026,802) in view of Choate (2,859,905). Patterson discloses a wind screen for an outdoor cooker including substantially all of the claimed limitations, which for all intensive purposes amounts to a box. Patterson does not specifically recite the claimed box construction. For those elements one of ordinary skill in the art would naturally go to the box art. Choate teaches a box construction including all of the claimed limitations. Specifically, Choate teaches sides 14,16,17,18 with connecting means attaching them to a bottom 11 and corner connectors 32 attaching the sides to one another to form the box. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the box construction taught by Choate into the invention disclosed by Patterson, so as to provide a sturdy and efficient construction.

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6. Claims 2-4, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson (6,026,802) in view of Choate (2,859,905) and further in view of Molla (2,469,885). The combination of Patterson and Choate teach substantially all of the claimed limitations, but do not specifically recite the claimed connecting means of holes and rings or holes and openings. Molla teaches a firebox construction that includes a connecting means with holes 20 and rings 21, as well as openings 22 in the sides to provide for air vents.

a. As regards the connecting means, there should be no question of the functional equivalence between the connector of Patterson and that of Molla, as they both deal with the same problem of connecting two sides of a box (regardless of whether one side is a bottom side or not). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the connecting means of Molla into the invention taught by the combination, so as to provide a viable connecting means.

b. As regards the vent holes, Molla teaches such holes/openings to provide for some air to get through to feed the fire. It should be noted that such holes may have other functions, such as for a chord or the like. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the holes of Molla into the invention taught by the combination, so as to provide for some air to reach the cooker.

7. Claims 6-8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson (6,026,802) in view of Choate (2,859,905). The combination of

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Patterson and Choate teach substantially all of the claimed limitations, but do not specifically recite the claimed material. First, it should be noted that it is inherent that the material of Patterson is heat resistant, as it surrounds a cooking apparatus that is disclosed as capable of producing high temperatures. Aside from that, the particular material used is simply a matter dependent on availability and cost. This material is well within the knowledge and ability of one of ordinary skill in the art. Further, applicant has failed to particularly point out any criticality that would require this material over other such materials also well known. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the claimed material into the invention disclosed by the combination of Patterson and Choate, so as to satisfy considerations of availability and cost.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571 272 4828. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872 9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

December 1, 2005

  
Alfred Basinas  
Primary Examiner